In the High Court of Uttaranchal, at Nainital.
Writ Petition No. 10 (S/B) of 2004

Vipin Kumar Trivedi S/o Ramniklal Trivedi
R/o 129. Gopal Kutir, Tripolia Road,
Sudhar Wara, District Bansuwar,
Rajasthan, Presently posted as Production
Manager Indian Medicines Pharmaceuticals
Mohan Wia Ramnagar,
District Almora .....Petitioner.

Versus

1- Indian Medicines Pharmaceuticals Ltd.
A Govt. of India undertaking Mohhan, wia
Ramnagar, District Almora through its
Managing Director.

2- Joint Secretary, Bhartiya Chikitsaya
Paditi Evam Homeopathy Deptt.
Health and Family Welfare Department,
Govt. of India, Red Cross Society
Building, Sansad Marg New Delhi.

3- Board of Directors, Indian Medicines
Pharmaceuticals, Ltd. Mohhan Wia
Ramnagar,
District Almora ...Respondents.

Sri A.K. Joshi, learned counsel for the petitioner.
Sri Arvind Vashist, learned Asstt. S.G. for the respondent.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 30-6-2006

By means of this writ petition the petitioner has prayed for issuance of a writ in the nature of certiorari quashing the impugned order dated 05-1-2000 passed by the respondent No.1, contained in Annexure No.7 to the writ petition. The petitioner also prayed for a writ of mandamus commanding the respondents to pay the arrears of the pay scale to the post of Production Superintendent from 26.4.1990 till the date of his

appointment as Production Manager along-with interest @ 18 % per annum. Further prayer has been made to command the respondents to count the service of the petitioner of the post of Office Superintendent considering the appointment of the petitioner on regular basis.

2- The facts of the case in nutshell are that the respondent No.1 Indian Medicines Pharmaceuticals Ltd. is a Govt. of India undertaking. On 10-12-1983 an advertisement was published for appointment on the post of Production Superintendent by the respondent No.1. In pursuance of the advertisement the petitioner also appeared in the examination and the petitioner was informed by the respondent vide letter dated 6.4.1984 that he was selected to the post of Assistant Production Superintendent. Thereafter the petitioner was issued appointment letter dated 14.6.1984 and he joined the services on 26.6.1984. In the year 1985 Dr. Gauri Shankar Gupta who was holding the charge of production Superintendent in the office of the respondent returned to his parental department, i.e. Directorate of Ayurved and Unani Services, U.P. hence the petitioner was handed over the charge of Production Superintendent on 6.4.1985. Again the post of production Superintendent was advertised and the petitioner again applied for the same and he was selected to the post of Production Superintendent on officiating capacity in the Central D.A. Pattern Pay Scale of Rs. 1100-1600 which was existing at that time. The petitioner was paid the above pay scale till the year 1993 and w.e.f. 30-3-1994 the department started to pay the consolidated pay of Rs. 4,563/- along with the D.A. applicable from time to time. The petitioner claimed that the action of the respondent in placing him in the consolidated pay is

wholly arbitrary and illegal and unsustainable in the eye of law. He moved several representations for ventilation of his grievances but no favourable response was given. However the matter was placed before the Board of Directors in its 100th/ 104th meeting and the decision of Board of Director was communicated to the petitioner vide letter dated 5.1.2000 in which it has been informed that the Board has taken a decision to fix the salary w.e.f. 1.1.1999 on the basis of the pay scale of Assistant Production Superintendent. The petitioner also alleged that he has moved another representation dated 5.10.2001 but no decision was taken. The petitioner has challenged the order dated 5.1.2000 of the Board taken in its 100th / 104th meeting reverting the petitioner to the post of Assistant Production Superintendent.

3- The respondent filed counter affidavit alleging therein that the Board at 100th meeting held on 28-12-1998 considered the letter dated 26-12-1988 of the petitioner and concluded that Sri Trivedi being B. Pharma (Ayurveda) was not eligible as per terms and conditions appeared in the advertisement. Therefore the Board decided that the post may be re-advertised and further advertisement was made. Sri Trivedi was selected and appointed on Industrial Dearness Allowance pay pattern scale of pay. It was also alleged that the petitioner on 26.4.1990 was appointed as Production Superintendent on officiating capacity.

4- We have heard the learned counsel for the parties and perused the record.

5- Perusal of shows that initially the petitioner was appointed on 14.6.1984 on the post of Assistant Superintendent of Production in pay scale of Rs. 650-30-740-35-810-EB-35-880-40-1000-EB-40-1200. He continued to work till 6.4.1985. He

was appointed on the post of Assistant Production Superintendent vide order dated 26.4.1990, which is evident from Annexure-5 to the writ petition on the recommendation of the selection committee and he was given pay scale of 1100-50-1800-E.B. 60-1600(Central D.A. Pattern). From 6.4.1985 the petitioner was handed over the charge of production Superintending as Dr. Gauri Shankar Gupta who was holding the charge of production Superintendent returned to his parental department but no order for salary was passed. The petitioner was only officiating on that post. However he was given some interim relief in the pay scale which was cancelled by the order dated 30-3-1994 and the petitioner was allowed a consolidated salary of Rs. 4563/- per month over and above which the D.A. etc were payable. For the purpose of other allowances the pay scale was treated to be Rs. 3390/- per month. The petitioner did not challenge this order in any court of competent jurisdiction and continued to work and made representation to the respondents to grant him pay scale of Production Superintendent.

6- The Board of Director considered the representation of the petitioner in its 100th meeting dated 26-12-1998 and 104th meeting dated 28-12-1998, by which the Board after scrutiny of the record and facts came to the conclusion that the petitioner was not eligible as per terms and conditions of the advertisement. Therefore forwarding of application of Sri Trivedi (petitioner) for selection of Selection Committee was irregular. The Board decided that the post may be re-advertised as officiating appointment clearly implies that technically the post remained vacant. The decision of the Board is correct as in the appointment letter dated 26-4-1990 it was specifically provided that the petitioner is being appointed on the

post of Assistant Production Superintendent and was allowed to officiate on the post of Production Superintendent by the same order on the pay scale of Rs. 1100-50-1800-E-B-1600, which is the pay scale of Production Superintendent.

7- The Board in its meeting dated 29-11-2002 advised to release the arrears of pay of the petitioner of the original post of Assistant Production Superintendent.

8- In the facts and circumstances of the case, we direct that the arrears of salary to the petitioner shall be paid as per the pay scale mentioned in the order dated 26.4.1990 till he was not promoted to the higher post.

9- Subject to above observation the writ petition is disposed of finally. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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